Supplementary Decision by Federal Judge Is Severe

BEER SALE VIOLATES LAW

New Haven Liquor Dealer Loses Test Case of Wartime Prohibition.

States Judge Chatfield Brooklyn, who decided on Wednesday that the wartime prohibition law is constitutional, handed down a supplemen tary decision yesterday in which he held that 2.75 beer is intoxicating under the existing laws and that selling it is a violation of the wartime prohibition act.

The circumstances of the test case decided yesterday were similar to the test case settled on Wednesday. Liquor interests of Connecticut that desired to get a ruling on beer pushed the case. Martin Schmauder of New Hayen was arrested and indicted, charged with selling intoxicating beer after July 1. Judge Chatfield, sitting for Judge Edwin S. Thomas of the Federal district of Connecticut, heard the evidence, took the case under advisement and finally decided it vesterday. cided it yesterday.

The beer decision, coming on the heels of the affirmation of the constitutionality of the wartime prohibition act, is about the severest blow given to the wet cause since the great majority of the States ratified the Eighteenth Amend-

## What the Decision Says.

The essentials of the decision were as The essentials of the decision were as follows:

"The information does not include the word 'intoxicating' and the defendant seeks by this demurrer to obtain a ruling that no crime can be committed by the sale of a malt product containing alcohol and being of the general class which has been and is sold over the bar in saleons as been but over the bar in saloons as beer, but which is that sort of beer now manufac-tured by the brewers since the restric-tion upon the use of grain and which

does not contain so much as 2.75 per cent. of alcohol.
"It was argued in support of the de-murrer that such beer was not in fact intoxicating, for the reason that before intoxicating, for the reason that before a person could obtain a sufficient quantity of alcohol to intoxicate he would have to drink to such an extent as to make him iil, or to exceed the capacity of consumption at one time. Whether intoxication could be produced by taking the beer in small quantities over a longer period of time or whether some individuals might be intoxicated by one quantity while others would not be affected by the same quantity cannot be ascertained from the information nor from the demurrer.

from the demurrer.
"It is apparent that there is nothing tn this record from which the court can determine in any way what amount of alcoholic content would make beer intoxicating and what would not. The de-murrer has admitted the facts alleged in the information. The defendant has thereby admitted that he made a sale of beer which is a product of malt and which is commonly known as lager.

# Admittedly Alcoholic Drink.

"A similar situation is presented by that portion of the statute which re-lates to the product of grapes produced by fermentation, and the mere statement of the proposition carries with it the enswer that a demurrer cannot be used in order to serve the purpose of a trial upon the issue which would be raised if a person came in and denied that the product sold by him was the substance nown when the act was passed as lage

Therefore the only point presented upon this demurrer to the information is wiether it is necessary to allege in an information that the beer sold was intrixicating. The information does state that it contains alcohol and is a malt product, and to this extent and in this way the material is excluded from the class of non-alcoholic beverages, such as root beer and other varieties of home made or harmless drinks, which are not

made or harmless drinks, which are not the product of malt.

"The statute expressly limits the ef-fect of this portion of the law to products of malt and vinous fermentation. This of itself militates against the idea that the sole purpose of the statute was to conserve food and indicates that a part of the purpose was to accomplish pro-hibition with the incidental beneficial result upon the health of the nation and the increase in orderly behavior which the advocates of prohibition believe will follow restriction of the liquor traffic and the prohibition of alcoholic beverages. "It is apparent that the intent of the Congress was to prohibit the sale of those malt preducts which

those malt products which were com-monly known as beer and which were also commonly supposed to be intoxicat-ing, which had always been classified as ing, which had always been classified as an intoxicating liquor and which, because of their alcoholic content, had some effect upon the production and man power of the nation, while at the same time using in their manufacture some of the food products of the nation which were needed for the purposes of the war and for the purposes of rostoring conditions at the termination of hostilities, so far as Congress had power to regulate conditions after, the war as a part of its military operation and conduct.

"It is evident that if Congress, by making a tremendous drain upon the resources of the country for immediate war purposes, should thereby make it necessary to regulate the use of material

Mexico Also to Restore Gen. Terra-

necessary to regulate the use of material immediately thereafter in order to bring matters back to a normal base, the laws by which such restoration would be had can properly be made a part of the military measures which must be adopted in order to carry on the war and are therefore justified under the powers of the United States against Minery in this district in an opinion filed this day.

Why Injunction Was Unbeld.

Chimushua Citt, Mexico, July 22 (By Mail).—All of the real estate and other town property of Enrique C. Creel, for mer Governor of Chihushua and Ambassador to Washington, have been returned to him by the Federal Government, it was announced here to-day.

The properties belonging to Gen. Lais

# Why Injunction Was Upheld.

of Internal Revenue was affirmed inas-much as the Collector might see fit to attempt enforcement of forfeitures under the revenue law because of violations of

attempt enforcement of forfeitures under the revenue law because of violations of the so-called prohibition taw, which was in no sense a revenue statute.

'In a dissenting opinion one member of the Court of Appeals expressed the epinion that the injunction against the Collector should also be vacated on the ground that no wrongful act being intended or threatened, no need of an injunction was shown.

'The Commissioner of Internal Revenue is given authority to prescribe regulations under which alcoholic products from the Island of Porto Rico may be admitted into the United States for use in industrial purposes in the arts and sciences, but no such alcoholic product is to be used as a beverage. There is in this no mention of alcoholic content. Other importation of distilled spirits, beer, wine and other intoxicating liquor is prohibited and all of the provisions are to be enforced until the termination of the present war and during the period of demobilization, which time shall be determined and proclaimed by the President of the United States.

"Under the law intending to prevent the use of narcotics if a person were charged with the sale of opium, a demurrer would not lie on the ground that the person receiving the opium was so off on the last leg of the journey.

The character of selling liquor could be directed in case the jury find that the person receiving the liquor would not be intoxicated thereby.

"The only defence would be that no person could receive any intoxicating effect therefrom, or in other words that it was not beer of the sort which Congress had in mind in using the word as used at the time of the passage of the act—in other words, any kind of mait beer which was in the legal sense an "Intoxicating ilquor" as Congress and public usage understood the term. It could never have been intended to leave to each jury the right to decide what it considered intoxicating liquor and on the contrary it was not intended to leave to a jury the right to say what Congress many than the legal sense and on the contrary it was not intended to leave to a jury the right to say what Congress many than the legal sense and on the contrary it was not intended to leave to a jury the right to say what Congress many than the legal sense and on the contrary it was not intended to leave to a jury the right to say what Congress many than the legal sense and on the contrary it was not intended to leave to a jury the right to say what Congress many than the contrary it was not intended to leave to a jury the right to say what Congress many than the contrary it was not intended to leave to a jury the right to say what Congress many than the contrary it was not intended to leave to a jury the right to say what the contrary it was not intended to leave to a jury the right to say what the contrary it was not intended to leave to a jury the right to say what the contrary it was not intended to leave to a jury the right to say what the contrary it was not intended to leave to a jury the right to say what the contrary it was not intended to leave to a jury the right to say what the contrary it was not intended to leave to a jury the right to say what the contract in to leave to a jury the right to say what

Congress meant.
Under the internal revenue laws and all standards by which Congress could have viewed the matter, the beer de-scribed in the present information was of the class known as intoxicating liquor, and as such its sale was prohibited

## **WET REFERENDUMS** GOING TO HIGH COURT

Petitions to Be Filed Soon in Four More States.

Curcaso, July 24.—Petitions for a referendum on the prohibition consti referendum on the prohibition consti-tutional amendment will be filed within forty-eight hours in Maine, Michigan, Missouri and Nevada, according to an-nouncement to-night from the Western headquarters of the Association Oppose to National Prohibitions. The refer-endum fight, because of conflicting court decisions, is expected to be taken to unsel for the association

Referendum petitions have been filed in Ohio, California, Colorado, Arkansas, Oklahoma, Nebraska and Washington, and court action is contemplated in Arkansas, Oktahoma and Washington, where the petitions have been held up. In Oregon, Idaho and Utah the courts have held that the right of referendum does not apply to a resolution ratifying a constitutional amendment, while, Mr. Mayer said, the Supreme courts of Washington and Ohlo have decided the right does apply. An attempt to have the United States Supreme Court review the adverse decision will be made, in

GET 4 PER CENT. BEER PERMITS

263 Providence Saloons to

"Non-Intoxicant." PROVIDENCE, July 24 .- Two hundre ixty-three licenses for the sale of intoxicating beverages" defined under a new State law as containing ne more than 4 per cent, of alcohol were granted to-day by the Board of Police Commissioners. Saloonkeepers expect to begin business to-merrow.

Licensing officials expressly state that the new licenses do not protect the li-censee "against violation of Federal

Dry Enforcement Bill Delayed. enforcement legislation met further de-lay to-day when the Senate Judiciary sub-committee considering the enforcement bill failed of a Committee members said the

# STUDENTS FAVOR LEAGUE AND DRYS

Columbia Summer School Vote Indicates Many Desire Resservations, However.

Results of Wednesday, the first day of the straw vote taken by the Speciator, the Columbia University daily newspaper, on the League of Nations and prohibition, showed that the unqualified acceptance of the League of Nations was favored and total prohibition was

summer students are:
"I favor the proposed League of Na-tions as published." "I favor a League of Nations consti-

tution with reservations. (More that one reservation may be indicated.) "I. An amendment that will protect in specific language the Monroe Doctrine.

"2. An amendment that will safeguard
American rights in such domestic ques-tions as immigration, naturalization,

labor, trade, tariff, racial questions, &c. "3. An amendment that will alter the provisions of Article X., by which article, as now written, the United States pledges its armed assistance in maintaining the territorial integrity of any member of the league against external aggression. "I am opposed to any League of Na-

One hundred and twenty-four were unqualifiedly in favor of the League of

Mexico Also to Restore Gen. Terra zan's Seized Property.

"The injunction against the Collector Internal Revenue was affirmed in a confiscated during the revolution."

Immigration Aid Assigned to Act in Conjunction With

EXCESSES BARED

Lawver Who Visited Russia Says Few People Favor

Bolshevik Rule.

With a view of taking steps to deport anarchists through the leads furnished by the Luck Legislative Committee, Byron H. Uhl, Assistant Commissioner of Immigration, yesterday assigned A. K. Schell, a special inspector from Ellis Island, to cooperate with the committee The Department of Labor is particularly anxious to add to its evidence against certain members of the I. W. W. Chairman Lusk said his committee rould be most happy to furnish any esistance to the Department of Labor.

Von Svarc, a Cleveland lawyer and American born citizen, who was in Russia as a member of the American the United States Supreme Court, as Russia as a member of the American well as the constitutionality of the Czecho-Slovak Commission, from August amendment, according to Levy Mayer, 17, 1917, to February 18 of the following year, was on the stand all day yes erday at the City Hall and will con-tinue his narrative to-day. Being on the scene during the days

hat led up to the overthrow of Kereny and the establishment of the rule the Bolsheviki, Mr. Svarc was able give a vivid account of conditions as to give a vivid account of they existed and the rapid progress of

it was the opinion of Mr. Svare that not more than 10 per cent of the Russian population were Boisheviks and that the Boishevik army would melt away in front of a popular army that was properly trained and led. At least 50 per cent of the Russians, the witness declared, were not even interested in the leclared, were not even interested in the orm of government under which they hould live. They wanted to be left alone

sould live. They wanted to be left also sould live. They wanted in the same proportions as the army same condition as at the rifle range. All they were anarchiats and who wall they were extremely valuable in teaching civilians the ruding live and parts of others covered with water.

The whole Fasser. Fame condition as at the rifle range. All they were extremely valuable in teaching civilians the ruding live and parts of others covered with water.

Flood damage to Morristown, N. J., Flood damage to Morristown, M. J., Flood damage to Morristown, M. J., Flood damage to Morristown, M. J.,

Petrograd."
In Russia to-day, however, a persor must either openly espouse the cause of Bolshevism or at least must be tacitly

Holshevism or at least must be tacitly satisfied with it. In addition to the propaganda there was a system of explonage, the witness explained.

"If you expressed one word of criticism of the Bolsheviki," he said, "the next thing you knew was that you would be visited by a squad, and if that squad did not feel at that moment that they wanted to spend their time in taking you over to Police Headquarters, they would probably take you to the

Souvenirs for Members Tiger Post No. 23. A use has been found for the thousan

rooden dummy guns with which men bers of Boyce's Tigers learned the man-Capt. Adolphe L. Boyce, founder and

commanding officer of the Tigers, said yesterday at the Army Building that he had received hundreds of letters from former Tigers who were arkious to get

He has decided to issue one of the old dumnies to every man joining the Tiger Post 23 of the American Legion. The post already has upward of 600 members, all of whom drilled under Capt. Boyce before going overseas, These members will be issued their old drill pleces on Sunday when they attend an outing at the Cedar Grove Beach Club at New Dorp, S. I.

The "broomsticks" are fashioned in the same proportions as the arms Springfield. That they were extremely through the lowlands roads are washed.

n their way into Russia below.

An experimental series and who clared they were anarchiats and who told him they came from America. One of them said he had lived nine years in Brooklyn. A school to train Bolahevik propagandist, the witness said, was conducted by men who came from Chicago and Philadelphia.

Planned to Rob Wealthy.

Planned to Rob Wealthy.

Springfield. That they was the rudivaluable in teaching civilians the rudivaluable in teaching civilians the rudivaluable. A school to train Bolahevik propagandist, the witness said, was conducted by men who came from Chicago and Philadelphia.

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Springfield. That they was the rudivaluable in teaching civilians was a swap of the late of the rudivaluable in teaching civilians water.

Flood damage to Morristown, N. J., Boos of manufacture in t

# was the destruction of Russia, one of them answered that they did not care. "So long as there is one poor man in Russia," he said, "they are going to take from the rich and give to the poor." Mr. Svarc said the quarrel of Kerensky with Korniloff, coupled with his vacillation, was responsible for the former's fall. Expressing conditions just prior to the overthrow of the Kerensky government, the witness said: "The Bolsheviki had a bad habit of gitting hold of arroored cars, armored automobiles and rushing them through the streets of Petrograd and carrying on disorderly shooting, and when I read process were behaving down at Washington, it reminded me very much of the Bolsheviat tactics of the same kind at Petrograd." ATLANTIC CITY FARE NOW \$100—BY AIR NOW \$100—BY AIR Passenger Service Starts Today—Time 90 Minutes. An air line carrying passengers between New York and Atlantic City, the first of its kind in this country, will be inaugurated to-morrow morning at 11 o'clock, when a flying boat with glassed in body will leave the Hudson River at Ninety-sixth street on the 105 mile trip down the Jersey coast. The flying boats are operated by the Travellers Company, composed of three

young aviators who spent several hun-American air service. The "limouein flying boats are of 150 horse-power, have a speed of 75 miles an hour and can carry two or three passengers besides the pilot. Bookings will be made from the Waldorf, McAlpin and Claridge hotels, and passengers will go to the Hud-The fare is \$100 each way, and passen-gers are allowed thirty-five pounds of

they would probably take you to the court yard of your house and you would be shot right on the spot, and it is this sterrorism, above all, that makes the mituation in Soviet Russia to-day almost intolerable."

The fare is \$100 each way, and passent master-General's Department through Gen. R. E. Wood, Q. M. G., entered into an agreement with the Canners pared schedule, will leave New Tork at 11 A. M. and arrive in Atlantic City at 12:30 P. M. The return trip will start at 3 P. M., and the Hudson should be reached by 4:30 P. M. Tests made on several days show that this schedule can be maintained, it is stated. The plots are Robert B. Hewitt and Charles Todd Selms, and the passenger agent is "This order would have resulted in a Todd Selms, and the passenger agent is Nicholas Reinhardt.

# FLOODS WON'T STOP **BIG RIFLE MATCHES**

on the Governors Island Water at Caldwell Range

Gradually Recedes.

The national rifle matches at Caldwell, N. J., will not be interfered with became of the flood Wednesday, according to a statement made yesterday by Col. Harlee, commandant of the range, Part of the range is still submerged by the overflow of the Passale. Water is grading to the property of the Passale. Water is grading to the passale water is grading to the passale. former Tigers who were affilious to get hold of the old "broomsticks" for souve-nirs.

He has decided to issue one of the of the range is still submerged by the larger because of the continued demo-bilization of the army. In addition to these items there is a surplus of millions

The Wallach Price Policy

Every now and then we print an advertisement headed

"What You Get for What You Pay"—and in that phrase lies

here. Not that we pretend to a higher virtue—but because

And Wallach customers don't like to fool themselves

that spells satisfaction for the long months after the Sale

Quality assured--we try to buy early enough and in large enough quantities to get our costs to the lowest point.

Small individual profit and large turnover is our way.

The other theory of merchandising has advantages as well for the Customer, but they are not the advantages Wallach Customers want; so,—as we have chosen, we

Every once in a while we have a "Sale"—when

profit ceases to be a part of the picture, and the rapid

The main point is that each benefits. And so

succeed, which is the answer from our point of view.

Even then, you'll find no sensational statements—no

camouflage—just goods. One man benefits by the early purchase, longer use, wider selection that goes with it;

long as each who buys here really does benefit—we shall

Closing time to-morrow (Saturday,

July 26th) marks your last chance

to buy good all-wool Hart Schaffner &

Marx Fancy Suits at our Sale Prices.

So-first of all we look to Quality. The Quality

rather than for the few minutes that precede it.

Four busy Stores,—thirty-two years of experience

go on-small profits and many of them.

movement of goods is all that counts.

another by price reductions.

most of the theory of price at the Wallach Stores.

the only way we know how to succeed is to give

our Customers what they want.

on a price tag.

and ample capital help.

The fallacy of mere cheapness finds no support

# U. S. OF ARMY FOOD after the war expenditures committee was appointed, the Director of Sales issued to the press a publicity statement with reference to the sale of meats and vegetables. This statement provided that meat and vegetables shall be purchased by the municipalities.

"This order would have resulted in

Food Surplus Still Grows. This surplus is constantly growing

of cans of fish and milk and tons of sugar, coffee and tea. It is utterly im-possible to estimate the exact value

of the tremendous quantity of food sup-plies in the hands of the Department,

"During the eight months which have

elapsed since the signing of the armis-tice only \$12,000,000 worth of food sup-plies have been sold by the War De-partment in the United States, and a very large quantity of that sold was spoiled and unfit for the general market —otherwise it would not have been placed on sale.

"On July 3 of the present year, and

and becoming less valuable.

placed on sale

Government. first of its kind in this country, will be Government and the people, who were inaugurated to-morrow morning at 11 in need of the meat food products. The inactivity of the Government in the dis-"This plan adopted by the Governproducts to any great extent for the reason that most municipalities, which have indicated a desire to purchase this o'clock, when a flying boat with position of these food supplies was and glassed in body will leave the Hudson is the result of a well defined policy of River at Ninety-sixth street on the 165 the Secretary of War to withhold them mile trip down the Jersey coast.

The flying boats are operated by the Travellers Company, composed of three purchase of the goods. "This sub-committee makes recomabroad so far as circumstances would

mendation that these food supplies be sold without delay on the domestic market to the American people, who, at, great sacrifice bought and paid for them, and the sub-committee looks with dis-Proof of Baker's Policy. "This policy finds expression not only in the testimony given to the subcom-mittee by the officers of the War De favor on the policy of exporting them from American to foreign nations for sale and consumption. but in documentary evidence as well. As an instance of such intention to prevent the American people from purchasing these products the Quarter master-General's Department through

mends that plans be devised by the Secretary of War through the War De-partment for the early disposition of all surplus food productions on the domestic markets under a system which will ortunity to secure the same for food grant to the American people an

### Dr. Crespi Operated Upon.

Panis, July 24.—Dr. Silvio Crespi, member of the Italian peace delegation, was operated upon to-day for appendi-citia. His condition is considered serious "This order would have resulted in all hough the operation apparently to the Government of millions of although the operation apparently of absence to homestcaders whose underly dollars to be derived from the sale of microssful. Dr. Crespi became suddenly this surplus, as well as depriving the ill as he was about to leave for London to represent Italy at a meeting of the American people of a large quantity of American people of a large quantity of Economical Council.

HE IS GOING HOME TO VOTE FOR TREATY

Baron d'Estournelles Says

purchased by the municipalities, the municipalities to pay the freight from the nearest warehouse and to have ten days in which to make payment to the Peoples Wish Peace. ember of the French Senate and a former delegate of the French Govern-ment to the peace conferences at The Hague, told the members of the Council on Foreign Relations in the Metropolitan Club last night that he was going back

food for the benefit of their people, have to France decided to ratify, as soon as been met with the threat of injunction possible, the treaty of peace, on the part of local dealers; which "I will vote for the treaty as it is," he threat has been sufficient to prevent said, "as a necessity for all of us to go back to our work, to prevent strikes and sterile aglitation. We will amend it af-ter. Our mutual good will is sure to be, more than its text, the real instrument to organize a durable league of nations.

"Everything now has been said for or against the text of the treaty of peace. But now the people are tired of these po-litical and theoretical discussions. They are anxious to see not only a treaty signed, but peace itself in action. The text of the treaty is not as important for them as the spirit which will inspire

its application "What the people everywhere want now it the new spirit of justice and lib-erty to take the place of the ancient traditions of violence and domination. What they want is to keep alive forever the feeling which made their victory possible against autocracy."

Respite Given to Homesteaders amendment to the agricultural appro-

# TOWN BEAUTING THE RESIDENCE OF THE PROPERTY OF Palm Beach Suits

SO popular are tropical-weight suits this summer that it might seem necessary to merely say "We have Palm Beach suits at \$13.75" and let it go at that.

But all is not genuine Palm Beach that is so called, and it is necessary to mention that ours is the genuine article—the better kind of these suits.

We have an appealing assortment of the fashionable styles and colors of these keep-cool suits and they are priced considerably less than suits of similar quality at other good shops.

Those in plain tan shades \$12.49 Mana-Fifth Floor, Front.

R.H. Macy & Co' Herald Square



# A New Smoke

COME time ago, as a footnote to an advertisement we ran a sentence introducing a new smoke. Since then we have had many calls for this cigar-and more important, many calls for more.

# Tifani

is a mild, blended Havana cigar that we are introducing at an unusually low price for so good a smoke. While the price is an inducement for a man to try them-the cigars themselves are an inducement to get some more of them.

PERFECTOS, box of 50 \$2.97 In tin box of 25......\$1.49 GEMS, tin box of 25

The tin boxes help you to keep the smokes moist in the mountains and dry at the eashore.

Try Us for Your Favorite Smoke!

Share-Main and Fifth Floors 15th Street



246-248 West 125th 3d Ave. cor. 122d Broadway, below Chambers Broadway, cor. 29th The Home of Hart Schaffner & Marx Clothes